Calendar No. 540

99TH CONGRESS
2d Session

SENATE

REPORT
99-250

HYONG CHA KIM KAY

MARCH 5 (legislative day, FEBRUARY 24), 1986.—Ordered to be printed

NEWARK PUBLIC LIBRARY

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

MAR 25 1986

REPORT

U. S. GOVT. PUBS.
DEPOSITORY 376

[To accompany S. 343]

The Committee on the Judiciary, to which was referred the bill (S. 343) for the relief of Hyong Cha Kim Kay, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 1, in line 5, following the word "States", insert the language "for permanent residence".

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to waive the excluding provision of existing law relating to one who has been convicted of a violation of the Korean drug control law for possession of 50 grams of marijuana.

STATEMENT OF FACTS

The beneficiary continues to reside in Seoul, Korea, with her U.S. citizen daughter, Stephani Kim Kay and her son Angelo Pelligrini, born out of wedlock to the beneficiary and Michael Pelligrini, a U.S. citizen, on July 8, 1981, in Korea. The beneficiary has advised that she is engaged to Mr. Pelligrini and that she will marry him. Her prospective husband and parents-in-law are citizens of the United States residing in Warwick, New York.

She married Steven Earl Kay, a United States citizen serviceman, on May 19, 1977. He was killed in an automobile accident August 27, 1977, in the State of Michigan while he was home on

71-007 O

READEX FICHE best copy available

Y 1.1/5:

leave. His parents are very anxious for their daughter-in-law and only grandchild to come to the United States and reside with them. She is the beneficiary of an approved visa petition to accord her status as an immediate relative filed by her late husband. The Immigration and Naturalization Service ordered that the visa petition not be revoked and it be considered for issuance of an immigrant visa. However, the beneficiary was found to be ineligible to receive an immigrant visa by the American Embassy, Seoul, Korea, on September 6, 1977, under the provisions of 212(a)(23) of the Immigration and Nationality Act, due to her conviction on November 8, 1975, by the Seoul District Criminal Court of a violation of the Korean drug control law. She was convicted of possession of 50 grams of marijuana, sentenced to one year and placed on two years' probation. Under the immigration law, there is no provision for administrative relief from this specific ground of ineligibility. The beneficiary underwent a medical examination on November 9, 1978, and was found to be in good health.

The following information with reference to the case was contained in Senate Report 97-213 in connection with S. 235 which was a similar bill for the relief of the same beneficiary passed by the Senate in the 97th Congress:

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, DC, November 5, 1979.

A22-278-834.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This refers to S. 1528 in behalf of Hyong Cha Kim Kay, who was also the beneficiary of S. 2942, 95th Congress.

It has now been learned that the beneficiary completed nine years of formal education in her native Korea by 1966. She advised that she has not been employed in the past five years. The beneficiary's assets consist of personal property valued at $45,000 and monthly benefit payments from the Veterans' Administration and Social Security in the amount of $369 and $332 respectively. The beneficiary resides with her daughter, Stephanie Kay, in off-base housing available to dependents of military personnel in Korea.

The beneficiary's father is deceased. Her mother is a citizen and resident of Korea. The beneficiary has a brother and two sisters who are also residents of Korea. The beneficiary's parents-in-law, Barton and Edith Kay, and four brothers-in-law, are citizens of the United States who reside in New Baltimore, Michigan.

Sincerely,

CORNELIUS J. LEARY,
Executive Assistant
(For the Commissioner).

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, DC, August 8, 1978.

A22-278-834.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: In response to your request for a report relative to the bill (S. 2942) for the relief of Hyong Cha Kim Kay, there is attached a memorandum of information concerning the beneficiary.

The bill would waive the provisions of the Immigration and Nationality Act which exclude from admission into the United States, aliens who have been convicted of violating, or conspiring to violate, a narcotic law or regulation, or any alien who is or has been or is believed to be an illicit trafficker in, or in possession of, narcotic drugs or marijuana and would authorize the issuance of a visa and the beneficiary's admission into the United States for permanent residence, if she is otherwise admissible under the Act. The bill limits the exemption granted the beneficiary to the grounds for exclusion known to the Department of State or the Department of Justice prior to the date of its enactment. The bill would also confer immediate relative status upon the widow of a United States citizen.

Sincerely,

LIONEL J. CASTILLO,
Commissioner.

Attachment.

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RES. 2942

Information concerning the case was obtained from Barton Kay, the father-in-law of the beneficiary.

The beneficiary, Hyong Cha Kim Kay, is a native and citizen of Korea who was born on September 15, 1951. Mr. Barton had no information relating to the beneficiary's education, family background, or employment record.

On November 8, 1975, the beneficiary was convicted of possession of fifty grams of marijuana under the Habit Forming Drug Control Law in District Criminal Court, Seoul, Korea. She was sentenced to serve one year at hard labor with sixty days credit for pretrial confinement and placed on two years probation. Mr. Barton advised that the confinement portion of the beneficiary's sentence was suspended upon condition of a favorable probation record.

Hyong Cha Kim Kay was married in Korea to Steven Kay on May 9, 1977. Steven Kay was born on January 23, 1956 in Mt. Clemens, Michigan. He was a serviceman in the United States Army. An immediate relative visa petition filed by United States Embassy in Seoul, Korea on May 19, 1977. Steven Kay died on August 27, 1977 as a result of an automobile accident in Mt. Clemens, Michigan

while on military home leave. Prior to his death, Steven Kay had advised his family in Mt. Clemens about the beneficiary's criminal record.

The beneficiary had a child, Stephanie Kay, on September 20, 1977 in Korea. Stephanie Kay is a United States citizen at birth through her father, Steven Kay. The beneficiary's immediate relative visa petition was not automatically revoked upon the death of Steven Kay because it was determined that humanitarian reasons made revocation inappropriate. The committee may desire to request the Bureau of Security and Consular Affairs, Department of State, for additional information.

The beneficiary resides in Korea with her daughter. Mr. Barton Kay advised that upon the death of her spouse, the beneficiary receive $3,000 separation pay from the United States Army and a $20,000 life insurance settlement. The beneficiary has also applied for Social Security benefits for herself and daughter.

A letter from J. Brian Atwood, Assistant Secretary for Congressional Relations to the Chairman of the Committee on the Judiciary, dated February 11, 1980 with reference to S. 1528 and S. 2942 of the 95th Congress, reads as follows:

FEBRUARY 11, 1980.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary, U.S. Senate.

DEAR MR. CHAIRMAN. In further reference to our report of December 5, 1978 and your letter of January 8, concerning the case of Hyong Cha Kim Kay, beneficiary of S. 1528, 96th Congress and S. 2942, 95th Congress, the United States Embassy at Seoul, Korea has reported no new developments subsequent to submission of its memorandum of information in 1978, which would have a bearing on Miss Kay's visa ineligibility.

J. BRIAN ATWOOD,
Assistant Secretary for Congressional Relations.

DECEMBER 5, 1978.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate.

DEAR MR. CHAIRMAN: In reference to your request for a report concerning the case of Hyong Cha Kim Kay, beneficiary of S. 2942, 95th Congress, there is enclosed a memorandum of information concerning the beneficiary. This memorandum has been submitted by the United States Embassy at Seoul, Korea, in whose consular jurisdiction the beneficiary resides.

This bill would provide for visa issuance and the beneficiary's admission for permanent residence notwithstanding her ineligibility as an alien who has been convicted of a violation of any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, if she is otherwise admissible under the provisions of the Immigration and Nationality Act. The relief granted is

limited to a ground for exclusion known to the Department of State or the Department of Justice prior to enactment.

Sincerely,

DOUGLAS J. BENNETT, Jr.,
Assistant Secretary for Congressional Relations.

Enclosure.

MEMORANDUM OF INFORMATION CONCERNING S. 2942 FOR THE RELIEF OF HYONG CHA KIM KAY

(Submitted by the American Embassy at Seoul, Korea)

The beneficiary is the widow of Steven Earl Kay, a United States citizen serviceman, who died in the United States on August 27, 1977, in the State of Michigan as the result of an automobile accident. She was born in Korea on September 15, 1951.

Mrs. Kay completed two years of high school and worked as a sales girl until she met her husband in 1975. They were married on May 19, 1977, at Seoul, Korea. She presently resides in Inchon, Korea, with a married sister. She has one child, Stephine, born September 20, 1977, at Seoul, Korea, who is a United States citizen. Mrs. Kay now wishes to join her parents-in-law in the United States.

Mrs. Kay is the beneficiary of an approved visa petition to accord her status as an immediate relative filed by her late husband. The Immigration and Naturalization Service has ordered that the visa petition filed on May 19, 1977, at Seoul, Korea, by the late Steven Earl Kay not be revoked pursuant to Title 8, CFR, Part 205.1(a)(3), and that the visa petition be considered for issuance of an immigrant visa at such time as the Department of State finds the beneficiary eligible for issuance of an immigrant visa.

The beneficiary was found on September 6, 1977, to be ineligible to receive an immigrant visa by the American Embassy, Seoul, Korea, under the provisions of 212(a)(23) of the Immigration and Nationality Act, as amended, due to her conviction on November 8, 1975, by the Seoul District Criminal Court of a violation of the Korean drug control law. She was convicted of possession of 50 grams of marijuana. She was given a sentence of one year and placed on two years' probation.

Under the immigration law, there is no provision for administrative relief from this specific ground of ineligibility. There are forwarded herewith three certified copies of the court record with English translation thereof.

The Embassy investigation revealed no additional derogatory information concerning the beneficiary.

The beneficiary is chargeable to the foreign state limitation for Korea.

The beneficiary underwent a medical examination on November 9, 1970, and was found to be in good health.

Senator Carl Levin, the author of this bill, submitted the following letter in support of his legislation:

U.S. SENATE,
Washington, DC, February 16, 1981.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to you on behalf of Hyong Cha Kim Kay of Seoul, Korea. Mrs. Kay is the beneficiary of private bill S. 235.

Hyong is the widow of Steven Earl Kay, an American citizen serviceman, killed while home on leave in an automobile accident, August 27, 1977. Steven and Hyong were married in 1977. One child was born of that marriage, Stephine, September 20, 1977.

Mrs. Kay presently resides in Korea with her daughter. She is, however, most anxious to join her deceased husband's parents and family in New Baltimore, Michigan. Mr. and Mrs. Kay have invited their daughter-in-law and only grandchild to share their home and future lives together. The Kay's have resided in the New Baltimore area all of their lives and state that their four remaining sons are also looking forward to welcoming Hyong and Stephanie into the family.

Hyong has been found ineligible to receive an immigrant visa because of a prior conviction for possession of marijuana. Aside from the one conviction for a relatively small amount of the drug, Hyong leads a reputable lifestyle and has an otnerwise clear record.

I am sure that you will agree to deny Mr. and Mrs. Kay the opportunity to care for and comfort their son's widow and child and to deny Hyong and Stephanie family benefits is a severe penalty to impose in light of the overall good character of the beneficiary. I am asking you to sympathetically review this situation and give favorable consideration to her private bill.

Sincerely,

CARL LEVIN.

A letter dated June 1, 1981, to the Chairman of the Senate Committee on the Judiciary from the Immigration and Naturalization Service with reference to S. 235 for the same beneficiary which passed the Senate in the 97th Congress, reads as follows:

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, DC, June 1, 1981.

A22-278-834.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This refers to S. 235 in behalf of Hyong Cha Kim Kay, who was also the beneficiary of S. 1528, 96th Congress.

The beneficiary continues to reside in Inchon, Korea, with her United States citizen child, Stephanie Kim Kay. She has advised that she has not been employed in the past five years. Her assets consist of personal property valued at $90,000, and monthly benefit payments from the Veteran's Administration and Social Security in the amount of $350 and $700 respectively.

The beneficiary's parents are deceased. Her adult brother and two sisters reside in Seoul, Korea. Her parents-in-law, Barton and Edith Kay, and four brothers-in-law, are citizens of the United States who reside in New Baltimore, Michigan.

Sincerely,

DAVID DIXON
(For the Commissioner).

A letter dated May 24, 1983, to the Chairman of the Senate Committee on the Judiciary from the Immigration and Naturalization Service with reference to the instant bill reads as follows:

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, DC, May 24, 1983.

A22 278 834.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in reference to S. 396 in behalf of Hyong Cha Kim Kay, who was also the beneficiary of S. 235 during the 97th Congress.

The beneficiary continues to reside in Seoul, Korea with her United States citizen child, Stephanie Kim Kay, and her son, Angelo Pelligrini, born out of wedlock to the beneficiary and Michael Pelligrini, a United States citizen, on July 8, 1981 in Korea. The beneficiary has advised that she is engaged to Michael Pelligrini and that she will marry him.

The beneficiary's assets consist of personal and real property valued at $50,000 and cash assets of $100,000 on deposit in Korea. In addition, she and her daughter are the joint recipients of an insurance cash settlement on the death of Steven Kay in excess of $180,000 which is deposited in the United States. The beneficiary continues to receive monthly benefit payments from the Veterans' Administration and Social Security in the amount of $550 and $450, respectively.

The beneficiary's parents-in-law, Barton and Edith Kay, and four brothers-in-law are citizens of the United States and reside in New Baltimore, Michigan. Her prospective husband and parents-in-law are citizens of the United States and reside in Warwick, New York. Both families are known to the other and desire to be considered interested parties.

Sincerely,

MARVIN T. ELY
(For Greg Leo, Acting Director,
Congressional and Public Affairs).

COST

No cost would result from enactment of this bill.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b)(1), rule XXVI of the Standing Rules of the Senate, it is hereby stated that the committee an-

ticipates that the bill will have no additional direct regulatory impact, inasmuch as it affects just one individual.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 343), as amended, should be enacted.

O